

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NICOLE JOHNSON
5514 Winter Place
Philadelphia, PA 19139

Plaintiff

v.

KROLL BACKGROUND AMERICA, INC.
1900 Church Street
Suite 400
Nashville, TN 37203

Defendants

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: CIVIL ACTION
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: NO.
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:
: JURY TRIAL DEMANDED
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Complaint

I. Preliminary Statement

1. This is an action for actual and punitive damages, costs and attorneys fees brought under the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et. seq.*

2. Plaintiff, Nicole Johnson, brings this action against Defendant, Kroll Background America, Inc. (“Kroll”), for violations of the Fair Credit Reporting Act. Kroll provided a background check report on Ms. Johnson to her new employer that included another individual’s criminal record for a drug offense, despite numerous indicators that the conviction was not attributed to the plaintiff. As a result of this erroneous report, Ms. Johnson, who has never been arrested or convicted of a crime, was fired from her job and suffered substantial humiliation, mental anguish and distress.

II. Parties

3. Plaintiff Nicole Johnson (“Ms. Johnson”) resides at 5514 Winter Place, Philadelphia, Pennsylvania, 19139.

4. Defendant Kroll Background America, Inc. (“Kroll”), upon information and belief, is a Tennessee corporation based at 1900 Church Street, Nashville, Tennessee, 37203. Kroll is doing business in the Commonwealth of Pennsylvania by providing Pennsylvania employers with background check reports on prospective and current employees.

III. Jurisdiction and Venue

5. This court has jurisdiction over this matter based upon 28 U.S.C. § 1331 in that the dispute involves predominately issues of federal law arising under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et. seq.*

6. Venue is properly laid, pursuant to 28 U.S.C. § 1391(b), in the judicial district where the claim arose.

IV. Factual Allegations

7. In or about August 2005, Ms. Johnson applied for a position as a provider service representative with Independence Blue Cross (“IBC”) in Philadelphia, Pennsylvania.

8. As part of her employment application, Ms. Johnson authorized IBC, by and through Defendant Kroll, to procure a consumer report and/or investigative consumer report on her, which could include her criminal history. To facilitate that background search, Ms. Johnson was asked to provide and provided her full name, a list of any other names she had used, her current and former addresses, her Social Security number, date of birth, and driver’s license number. *See*, Exhibit 1.

9. Shortly after she completed this application, IBC offered her the position of provider service representative, and she was scheduled to begin her training on September 12, 2005.

10. Ms. Johnson was delighted to obtain what she considered to be a very good job at IBC, which offered her a chance to provide much better for her family. At the time that she applied for the job with IBC, Ms. Johnson was working in a job that paid her only \$34.76 per diem.

11. Ms. Johnson reported for training at IBC on September 12, 2005 and experienced no problems with her job until Thursday, September 22, 2005.

12. On or about September 22, 2005, Ms. Johnson was informed that Nancy, a representative from IBC's Human Resources Department, wanted to see her. Nancy told Ms. Johnson that she has a criminal record and that her job required her to have a clear criminal record. As a result, IBC would not permit Ms. Johnson to continue her training.

13. Ms. Johnson truthfully responded by denying that she has a criminal record.

14. Ms. Johnson, in fact, has no criminal record.

15. Ms. Johnson's protestations that she has no criminal record were unavailing. Nancy told her that if she could prove that she did not have a criminal record, then she could be considered for rehire at IBC.

16. During this discussion between Ms. Johnson and Nancy, a security guard stood watch at the door. At the end, Ms. Johnson asked whether she could return to her desk to gather her personal items. She was told that her desk already had been cleaned out.

17. Ms. Johnson, humiliated and crying, then was escorted out of the building by the security guard, in front of many other individuals and employees of IBC. The security guard watched her until she left the building.

18. Ms. Johnson had proudly told family and friends that she had obtained the job at IBC. She suffered humiliation from having to tell family and friends that she had been fired from the job, especially because she had been fired as a result of false accusations that she had a criminal record.

19. On or about Saturday, September 24, 2005, Ms. Johnson had her first opportunity to see the report of her putative criminal record when it arrived in the mail along with a letter from N. Elise Nocito, Human Resources Representative from IBC. *See*, Exhibit 2.

20. The criminal record report was a consumer report from Kroll that was requested on September 2, 2005. The report listed a drug offense with an arrest date of May 4, 2005 and a conviction date of July 20, 2005, with a sentence of nine months probation. It also noted that the court record was obtained from the Philadelphia County Court of Common Pleas.

21. The indices and records of the Philadelphia County Court of Common Pleas do not permit searches by the person's Social Security number. A match between the person being searched and the person who was the subject of a criminal court case is made primarily through name, date of birth and address.

22. The criminal record report prepared by Kroll stated that the court record for the drug offense was found under the name Nicole Johnson with a "similar" date of birth to the Nicole Johnson who was the subject of the search and an address of 104 E. Ruscomb Street, in Philadelphia, PA.

23. The report Kroll provided to IBC included inaccurate information regarding Plaintiff Ms. Johnson.

24. The birth date noted in Kroll's report is not Plaintiff Ms. Johnson's date of birth. Although the birth date of the Nicole Johnson for whom the record was found was close to that of plaintiff Ms. Johnson, it is not a match.

25. Plaintiff Ms. Johnson has never resided at 104 E. Ruscomb Street, the address of record for the Nicole Johnson with a criminal conviction.

26. The same report by Kroll also indicates that a search was performed of Plaintiff Ms. Johnson in the database of the Pennsylvania State Police ("the PSP") and that no criminal record was found.

27. The PSP maintains the central repository of criminal records for the Commonwealth of Pennsylvania. A conviction in the Court of Common Pleas in Philadelphia is reported to the PSP. It would be expected that a conviction that appears in Philadelphia court records would also be reported when a background check is performed through the PSP.

28. The PSP reports an offense to an individual when two of three criteria – name, date of birth, Social Security number – match. Thus, the criteria for matching individuals in a PSP database check is more reliable than a database check of Philadelphia court records, because the searcher can determine whether the unique Social Security number of the person being searched matches that of the person who was convicted.

29. The fact that the PSP database search resulted in a clean record for Plaintiff Ms. Johnson was very strong proof that the Philadelphia County criminal record that Kroll identified is not that of Plaintiff Ms. Johnson. Therefore, the "no record" result of the State Police report

means that neither Plaintiff Ms. Johnson's Social Security number or date of birth match those identifiers of the Nicole Johnson convicted for the drug offense.

30. Given (1) the inconsistencies between the record results from the PSP database and the Philadelphia county court database, and (2) the different date of birth and address for the Nicole Johnson with the drug offense and Plaintiff Ms. Johnson, Kroll either knew or should have known that the criminal record found for Nicole Johnson was for a different person than Plaintiff Ms. Johnson. Kroll, therefore, either knew or had reason to know that the report it provided to IBC contained inaccurate information about Plaintiff Ms. Johnson.

31. The consumer report prepared by Kroll contained "remarks" indicating that the record found in the court of common pleas contained a "similar date of birth," that the record might not be for the job applicant under investigation, and that the employer should seek confirmation from the applicant. However, these remarks have no relevance, because Kroll did not employ reasonable procedures to insure maximum possible accuracy, given the multiple indicia that the record did not concern Plaintiff Ms. Johnson. Nor did the remarks mitigate the harm suffered by Plaintiff Ms. Johnson as a result of having the other person's criminal conviction wrongly attributed to her in the first place.

32. Kroll either was aware or should have been aware that its procedures for conducting criminal record searches had resulted in the company issuing consumer reports erroneously linking an individual to the criminal history of another individual.

33. A March, 20, 2006, article in *People* magazine detailed a similar case in which Kroll issued a criminal background report to an employer that erroneously linked a job applicant to an offender with the same name. According to the article, Kroll makes no apologies for how the

case was handled. In response to inquiries about that case, Kroll's general counsel, Jesse N. Bacon, admitted that mismatched criminal records are a problem. He is quoted as taking the position that mix-ups are unfortunately inevitable and saying, "In a former life I was a district attorney, and I used to see it weekly... You get crossed records, or maybe somebody transposed a number or you don't have a middle initial."

34. Kroll did not follow reasonable procedures to assure the maximum possible accuracy of the information about Ms. Johnson when it prepared the September, 2005 consumer report about her for IBC.

35. As a result of the inaccuracy in the consumer report Kroll provided to her employer, Ms. Johnson suffered actual damages. Specifically, she was terminated from her job, and she also suffered humiliation, embarrassment, mental anguish and emotional distress.

36. Ms. Johnson had to take steps to clear her own name. She had her fingerprints checked against the Philadelphia Police Department Criminal Records File so that she could satisfy IBC that she has no criminal record.

37. Based on that fingerprint check, on or about November 15, 2005, Ms. Johnson obtained documentation from the Philadelphia Police Department that she does not have a criminal record in Philadelphia. *See*, Exhibit 3.

38. Ms. Johnson also was required to get an attorney in order to seek reinstatement to her job at IBC.

39. After her attorney provide IBC with a copy of the results of the fingerprint check, Ms. Johnson was rehired by IBC on or about December 7, 2005.

V. Causes of Action

Count One: Violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b)

Failure to Follow Reasonable Procedures to Assure Maximum Possible Accuracy of the Information Concerning Ms. Johnson

40. Plaintiff realleges and incorporates by reference all preceding allegations of law and fact.

41. Ms. Johnson is a “consumer,” as defined by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681a (c).

42. Kroll is a “consumer reporting agency,” as defined by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681a (f).

43. The background check report on Ms. Johnson that Kroll provided to IBC in or about September, 2005 is a “consumer report,” as defined by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681a (d).

44. As detailed above, the consumer report on Ms. Johnson that Kroll provided to IBC in or about September, 2005 contained inaccurate information about Ms. Johnson.

45. Kroll violated the federal Fair Credit Reporting Act, 15 U.S.C. § 1681e(b), by failing to follow reasonable procedures to assure the maximum possible accuracy of the information about Ms. Johnson when it prepared the September, 2005 consumer report it provided to IBC.

46. As a result of Kroll’s conduct, actions and inaction, Ms. Johnson was terminated from her job. She consequently lost pay until she was restored to her position after she arranged and paid to have her fingerprints checked against the Philadelphia Police Department Criminal Records File.

47. As a result of Kroll's conduct, actions and inaction, Ms. Johnson also suffered actual damages in the form of humiliation, mental anguish and emotional distress.

48. Kroll's conduct, actions and inactions were willful, rendering the Defendant liable for actual damages and punitive damages in the amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. Alternatively, Kroll's conduct, action, and inactions were negligent, rendering the Defendant liable for actual damages pursuant to 15 U.S.C. § 1681o.

49. Plaintiff is entitled to recover costs and attorney's fees from the Defendant pursuant to 15 U.S.C. § § 1681n, 1681o.

Count Two
Violation of the Fair Credit Reporting Act,, 15 U.S.C. § 1681k

Failure to Comply with Requirements Regarding
The Use of Public Record Information for Employment Purposes

50. Plaintiff realleges and incorporates by reference all preceding allegations of law and fact.

51. Pursuant to 15 U.S.C. § 1681k, when a consumer reporting agency provides a consumer report for employment purposes that includes public record information that is likely to have an adverse affect upon a consumer's ability to obtain employment, the consumer reporting agency must either:

- (a) notify the consumer that the public record information is being reported, together with the name and address of the person to whom the information is being reported, or
- (b) maintain strict procedures to insure that the information it reports is complete and up to date.

52. The consumer report that Kroll provided to IBC about Ms. Johnson was furnished for employment purposes.

53. The consumer report that Kroll provided to IBC about Ms. Johnson included information that is a matter of public record that is likely to have an adverse affect upon a consumer's ability to obtain employment.

54. Kroll violated the federal Fair Credit Reporting Act, 15 U.S.C. § 1681k, by:

(a) failing to notify Ms. Johnson that it was furnishing adverse public record information to IBC, and

(b) failing to maintain strict procedures to ensure that the public record information was complete and up to date.

55. As a result of Kroll's conduct, actions and inaction, Ms. Johnson was terminated from her job. She consequently lost pay until she was restored to her position after she arranged and paid to have her fingerprints checked against the Philadelphia Police Department Criminal Records File.

56. As a result of Kroll's conduct, actions and inaction, Ms. Johnson also suffered actual damages in the form of humiliation, mental anguish and emotional distress.

57. Kroll's conduct, actions and inactions were willful, rendering the Defendant liable for actual damages and punitive damages in the amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.

58. Alternatively, Kroll's conduct, action, and inactions were negligent, rendering the Defendant liable for actual damages pursuant to 15 U.S.C. § 1681o.

59. Plaintiff is entitled to recover costs and attorney's fees from the Defendant pursuant to 15 U.S.C. § § 1681n, 1681o.

VI. Prayer for Relief

Plaintiffs request that this Honorable Court provide Plaintiff Nicole Johnson with the following relief:

1. Declaratory judgment that Kroll violated Ms. Johnson's rights under the Fair Credit Reporting Act;
2. Actual damages, including both the pecuniary damages of lost wages and non-pecuniary damages for humiliation, embarrassment, mental anguish, and emotional distress;
3. Punitive damages;
4. Attorneys' fees and costs incurred by the plaintiff in the prosecution of this action; and
5. All other relief that the Court may deem just and proper.

SHARON DIETRICH, Attorney Identification #44464
KERRY SMITH, Attorney Identification #94473

Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102

Attorneys for Plaintiff Nicole Johnson

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Demand for Jury Trial

Please take note that plaintiff demands trial by jury of all issues raised in this action.

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Attorneys for Plaintiff Nicole Johnson